Ameriguard Security Services, Inc. *and* United Security and Police Officers of America ("USPOA") and United Union of Security Guards ("UUSG"). Case 05–RC–085844

July 31, 2015

DECISION ON REVIEW AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND MCFERRAN

On August 23, 2012, the Regional Director for Region 5 issued a Decision and Order in which he found that the petition at issue was barred by a collective-bargaining agreement executed during the term of an earlier collective-bargaining agreement because the later agreement covered "a new and separate bargaining unit" as described in *Michigan Bell Telephone Co.*, 182 NLRB 632 (1970). Thereafter, pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Petitioner filed a timely request for review of that decision. On October 31, 2012, the Board granted the Petitioner's request for review with respect to the Regional Director's application of *Michigan Bell*.[1]

Having carefully considered the entire record in this case, we find, contrary to the Regional Director, that the petition was not barred by a collective-bargaining agreement. Accordingly, we reinstate the petition and remand this case to the Regional Director for further appropriate action.

Facts

The Employer supplies security guards for the U.S. Department of Health and Human Services (HHS) and the U.S. Food and Drug Administration (FDA) facilities in Rockville, Maryland, pursuant to service contracts with the federal government. The Intervenor, UUSG, represents the approximately 200 guards who work at those facilities. The Employer and UUSG entered into a collective-bargaining agreement effective from October 1, 2009, to September 30, 2012. At the time of that agreement, the Employer provided security guards to the HHS and FDA facilities pursuant to a single service contract with HHS. The collective-bargaining agreement defined the bargaining unit as the guards assigned pursuant to that particular service contract with HHS "and its successor(s), including the U.S. Department of Homeland Security [(DHS)]."

On October 1, 2011, the Federal Government modified the Employer's service contract. Although the Employer continued to provide security guards to the HHS facilities pursuant to an unchanged service contract with HHS, the Employer provided security services to the FDA facilities pursuant to a new service contract with DHS, rather than HHS. After the service-contract bifurcation, DHS's oversight of the FDA service contract and stricter regulations led to some changes in the terms and conditions of employment for guards assigned to the FDA facilities. Most notably, guards had to obtain a heightened security clearance, maintain several credentials and satisfy stricter gun-testing requirements to work at the FDA facilities. Before the bifurcation, guards worked interchangeably at the HHS and FDA facilities. Most guards worked some shifts at both. Afterward, the Employer organized separate dedicated forces of HHS guards and FDA guards. HHS guards now almost never work at the FDA facilities, though FDA guards will occasionally work at the HHS facilities if their credentials lapse.

Until May 31, 2012, nearly 8 months after the bifurcation, the Employer and UUSG continued to apply the original collective-bargaining agreement to both the HHS guards and the FDA guards. On May 31, 2012, the Employer and UUSG signed two agreements labeled "Contract Extension[s]" that were largely identical to the original collective-bargaining agreement. One agreement covered the HHS guards. It retained the same recognition clause as the original agreement, defining the bargaining unit as the guards assigned pursuant to the service contract with HHS. The other agreement covered the FDA guards and defined the bargaining unit as the guards assigned pursuant to the service contract with DHS. Both of the new agreements were effective June 1, 2012, to October 31, 2013.

On July 24, 2012 (68 days before the expiration of the original collective-bargaining agreement), the Petitioner, USPOA, filed two petitions: one to represent the HHS guards, and the other to represent the FDA guards. The Regional Director directed an election for the petition seeking to represent the HHS guards, which is not at issue in this case; however, the Regional Director dismissed the petition seeking to represent the FDA guards. Applying *Michigan Bell*, supra, the Regional Director found that, although the "Contract Extension" covering

[1] At the time of the Order granting the request for review, the composition of the Board included persons whose appointments were challenged as constitutionally infirm, one of whom participated in the present case. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. In view of that decision, we have carefully considered this matter, and reaffirm the earlier decision to grant review.

As discussed below, in companion Case 05–RC–085863, the Regional Director determined that a petition for a different unit was not barred by a contract. No party requested review of that decision.

the HHS guards did not bar a petition, the "Contract Extension" covering the FDA guards *did* bar a petition.

Analysis

We begin by noting that, had the Employer and UUSG not signed a new agreement on May 31, 2012, USPOA's petition to represent the FDA guards filed 68 days before the expiration of the original agreement would unquestionably be timely. See *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000, 1001 (1962) (establishing that an agreement does not bar a petition filed between 90 and 60 days before its expiration). Likewise, the Board has long held that it will deem to be a premature extension an amendment or new agreement entered into during the term of an original collective-bargaining agreement that extends the expiration date of that original agreement. *Direct Press Modern Litho, Inc.*, 328 NLRB 860, 861 (1999). A premature extension does not bar a petition filed during the standard open period before the preexisting expiration date of the original agreement. Id.

The Board found an exception to its premature-extension doctrine in *Michigan Bell*, supra. In that case, an employer and a union had entered into two separate collective-bargaining agreements covering, respectively, the employer's plant and traffic departments. Id. at 632. Those agreements were effective from October 4, 1966, to October 2, 1969. Id. On June 15, 1968, the employer created a new switching-systems department to combine into one department related functions involving telephone equipment. Id. To staff its new department, the employer selected some of its employees from the plant and traffic departments, who were covered by the agreements described above, and some of its employees from the operations department, who were not represented by a union. Id. On August 28, 1968, during the term of the plant- and traffic-department agreements, the employer and the same union that continued to represent the plant and traffic departments entered into a new collective-bargaining agreement covering the switching-systems department. Id. That agreement was effective from August 28, 1968, to May 1, 1971. Id.

The Board dismissed an August 1, 1969 petition filed by a rival union to represent the switching-systems department's employees even though it was filed during the window period of the plant and traffic departments' agreements. Id. The Board found that the switching-systems department's agreement barred the petition, as it was not a premature extension of the earlier agreements covering the plant and traffic departments. Id. The switching-systems department, the Board reasoned, was "a newly created unit consisting of employees drawn from other departments," and the prior agreements covering other units could not affect an agreement covering such a "new and separate departmental unit." Id.

Contrary to the Regional Director, we do not find *Michigan Bell* controlling here. Unlike *Michigan Bell*, we are not presented with a situation where the employer staffed a new department by transferring certain employees from multiple departments so as to combine employees who had not been covered by a common collective-bargaining agreement and, for some employees, by no agreement at all. Here, all of the Employer's guards had been in a single bargaining unit covered by the original collective-bargaining agreement. Even after the service-contract bifurcation, all of the guards remained in the same bargaining unit under the original agreement for nearly 8 months, although the terms and conditions of employment of guards assigned to the FDA facilities had changed in some respects from those of the guards assigned to the HHS facilities. Even though the Employer and UUSG agreed to split the bargaining unit roughly in half by entering into two separate new agreements on May 31, 2012 (during the term of the original agreement),[2] nothing significant had changed at that time. Under these circumstances, we find that the new agreement covering only the FDA guards was a premature extension of the original agreement—just as the Regional Director found the new agreement covering only the HHS guards. Accordingly, there was no bar to USPOA's timely petition.

ORDER

The Regional Director's dismissal of the petition is reversed. We reinstate the petition and remand the case to the Regional Director for further appropriate action.

Dated, Washington, D.C. July 31, 2015

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] No party contends that it was improper for the Employer and UUSG to split the bargaining units by agreement.